

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

☒ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV Inc.				
	DEFENDANT(S) INVOLVED IN SETTLEMENT Daiso California LLC				
CASE INFO	COURT DOCKET NUMBER BC670588		COURT NAME Los Angeles County Superior Court		
	SHORT CASE NAME Shefa v. Daiso				
REPORT INFO	INJUNCTIVE RELIEF Reformulation or Warning label				
	PAYMENT: CIVIL PENALTY \$9,000		PAYMENT: ATTORNEYS FEES \$39,000		For Internal Use Only
	PAYMENT: OTHER 0.00		DATE SETTLEMENT SIGNED 9 / 12 / 2017		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL			
COPY OF SETTLEMENT MUST BE ATTACHED					
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum				
	ORGANIZATION Law Office of Daniel Greenbaum			TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320			FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE CA	ZIP 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Telephone: (818) 809-2199
Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com

Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

DAISO CALIFORNIA LLC; and DOES 1
through 100, Inclusive,

Defendants.

) Case No. BC570588

) Hon. John P. Boyle

)

) **[PROPOSED] CONSENT JUDGMENT**

) **AS TO DAISO CALIFORNIA LLC**

)

)

) Action Filed: July 31, 2017

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1. INTRODUCTION

1.1 Parties

This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Daiso California LLC (“**DAISO**” or “**Defendant**,” with Shefa and DAISO individually referred to as a “**Party**” and collectively as the “**Parties**.”)

1.2 Plaintiff

Shefa is a public benefit non-profit corporation that seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Settling Defendant

DAISO employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §25249.6 *et seq.* (“**Proposition 65**”).

1.4 Products Covered

The products listed on the chart below and covered by this Consent Judgment, were manufactured, sold, or distributed for sale in California by DAISO and contain Di-[2-Ethylhexyl]Phthalate (“**DEHP**”) and/or Diisononyl Phthalate (“**DINP**”) and/or Di-[n-Butyl]Phthalate (“**DBP**”) (collectively, the “**Covered Products**”) without first providing a clear and reasonable warning as required by Proposition 65.

“COVERED PRODUCTS”

Product Type	Product Name / Identifier	Phthalate
Plastic Case	Studieux Colorful Zipper Case; UPC: 4549131278187	DEHP
Computer Stand	Stand For Tablet PC; UPC4947678031690	DEHP
Plastic handled tool	Multi-Purpose Needle Nose Pliers; UPC4549131311181	DEHP
Clothes hanger	Anti-Slip Hanger; UPC4947678014754	DEHP
Sink stopper	Lens and Hair Catch; UPC4549131046144	DEHP

Plastic hair brush	Head Spa Brush for Men; UPC4528529099290	DINP
Plastic handled tool	Eyelet Punch; UPC4549131382402	DINP
Plastic bike lock	Bicycle Cable Lock with Key; UPC4979909936061	DBP

1.5 General Allegations

Shefa alleges that DAISO manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Products that contain DEHP and/or DINP and/or DBP without first providing a clear and reasonable warning required by Proposition 65.

DEHP (CAS # 117-81-7) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer and reproductive toxicity as Proposition 65 defines that term. 27 CCR §25000

DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer as Proposition 65 defines that term. 27 CCR §25000

DBP (CAS # 84-74-2) is a chemical listed under Proposition 65 as a chemical known to the state to cause reproductive toxicity as Proposition 65 defines that term. 27 CCR §25000

DEHP, DINP and DBP are referred to hereafter as “the Listed Chemicals.”

DAISO denies these allegations.

1.6 Notice of Violation

On March 2, 2017, Shefa served Defendant and the requisite public enforcement agencies with a 60-Day Notice of Violation alleging that Defendant violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to the Listed Chemicals. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On July 31, 2017, Shefa filed the instant complaint in the Superior Court in and for the County of Los Angeles against Daiso California LLC and DOES 1-100, alleging violations of

California Health & Safety Code § 25249.6, based on exposures to the Listed Chemicals contained in the Covered Products sold in the State of California (the “**Complaint**”).

1.8 No Admission

DAISO denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by DAISO of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by DAISO of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by DAISO. This section shall not, however, diminish or otherwise affect DAISO’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the County of Los Angeles, the Defendant agrees that it employs or has employed ten or more persons during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

1.10 Effective Date

For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the Consent Judgment is approved and entered by the Court.


2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Reformulation Standards. As of the Effective Date, Defendant shall only manufacture, distribute, or sell Compliant Products in California. “Compliant Products” are defined as those Covered Products containing the Listed Chemical in concentrations less than or equal to 1000 parts per million (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or

any other scientifically reliable methodology for determining the Listed Chemical content in a substance of the form of the Covered Products herein.

2.2 Warning Standards. Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells products that are not Compliant Products, Defendant will provide warnings that comply with Proposition 65 on such Covered Products. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.

2.3 Actual Warning Language. The Parties agree that product labeling stating the following shall constitute compliance with Proposition 65 with respect to any Covered Products not reformulated:

“ WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.” *(Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol before the word “WARNING” may be printed in black and white.)*

3. MONETARY SETTLEMENT TERMS

3.1 Payment from Defendant. Within ten (10) business days of the Effective Date, Defendant shall make the Total Settlement Payment of **\$48,000.00**.

3.2 Allocation of Payments. The Total Settlement Payment shall be paid in three (3) separate checks made payable and allocated as follows:

3.2.1 Civil Penalty. Defendant shall pay \$9,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$6,750.00 shall be made payable to

OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The Shefa portion of the civil penalty payment in the amount of \$2,250.00 shall be made payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3.2.2 Attorney's Fees and Costs. A reimbursement of Shefa's attorney's fees and costs in the amount of \$39,000.00 payable to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4. CLAIMS COVERED AND RELEASED

4.1 Shefa's Public Release of DAISO and its Downstream Releasees

This Consent Judgment is a full, final, and binding resolution between Shefa and DAISO of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7, against DAISO, its parents, subsidiaries, affiliated entities under common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and each entity to whom DAISO directly or indirectly exports,

1 distributes or sells the Covered Products, including, without limitation, downstream distributors,
2 wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but
3 not limited to (“**Releasees**”), based on failure to warn of alleged exposures to the Listed Chemicals
4 from Covered Products manufactured, sold, exported or distributed for sale in California by DAISO
5 prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that
6 DAISO manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the
7 date any other Releasee distributes or sells the Covered Products.

8 Upon entry of this Consent Judgment by the Court, going forward, DAISO’s compliance
9 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
10 65 by DAISO or any other Releasee with respect to the Listed Chemicals in Covered Products
11 manufactured, sold, or distributed for sale in California by DAISO on and after the Effective Date.

12 **4.2 Shefa’s Individual Release of Claims**

13 In further consideration of the promises and agreements herein contained, Shefa, on its own
14 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
15 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
16 legal action, and releases all claims that it may have against DAISO and Releasees, including,
17 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
18 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
19 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to the Listed
20 Chemicals from Covered Products manufactured, sold, or distributed for sale in California by
21 DAISO prior to the Effective Date. The releases in Section 4.2 are provided in Shefa’s individual
22 capacity and are not releases on behalf of the public.

23 **4.3 DAISO’s Release of Shefa**

24 DAISO, on its own behalf and on behalf of its past and current agents, representatives,
25 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
26 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
27 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
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otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

4.4 Release of Unknown Claims

It is possible that other claims not known to the Parties arising out of the facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be discovered or developed. Shefa, on behalf of itself only, on the one hand, and DAISO, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action therefor. Shefa and DAISO acknowledge that the claims released in Section 4 may include unknown claims, and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Shefa understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products, Shefa will not be able to make any claim for those damages against any of the Releasees.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within ninety (90) days after it has been fully executed by the Parties, or by such additional time as the Parties may agree in writing.

6. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any provision of this Consent Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms

1 due to comments from the Office of the Attorney General or after a hearing before the Court in
2 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by any
3 such modified terms must re-execute the modified Consent Judgment and such modified Consent
4 Judgment then shall be presented by Shefa to the Court for approval; provided, however, that if a
5 provision of this Consent Judgment declared void or unenforceable is material to the Party for
6 whom such term provided a benefit or protection, that Party can seek other remedies, including,
7 without limitation, rescission or reformation, based on the provision being declared void or
8 unenforceable.

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. DEHP is listed pursuant to Proposition 65 as a chemical
12 that is known to the State of California to cause cancer and reproductive toxicity. DINP is listed
13 pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer.
14 DBP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to
15 cause reproductive toxicity.

16 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason
17 of law generally, or as to the Covered Products, including without limitation the delisting of DEHP,
18 DINP, and/or DBP, then DAISO may provide written notice to Shefa of any asserted change in the
19 law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to
20 this Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected.
21 None of the terms of this Consent Judgment shall have any application to Covered Products sold
22 outside of the State of California.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to
25 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
26 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
27 Party by the other at the following addresses:
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To DAISO:

Liz Shoemaker, Esq.
TERAOKA & PARTNERS LLP
One Embarcadero Center, Suite 1020
San Francisco, CA 94111

To Shefa:

Daniel N. Greenbaum
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Ave., Suite 320
Van Nuys, CA 91406

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Plaintiff agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this Consent Judgment to the Court with a motion seeking Court approval.

12. MODIFICATION

12.1 In the event OEHHA re-establishes the safe harbor No-Significant Risk Level ("NSRL") for either DEHP, DINP or DBP, which DAISO asserts would allow for the Covered Products to contain levels of the Listed Chemicals in amounts greater than those set forth above in Section 2.1, then DAISO may provide written notice to Shefa of any such assertion and the Parties shall confer within 30 days to attempt to agree upon modification of this Consent Judgment. Should such attempts at informal resolution of a modification fail, and in the event DAISO still intends to change its reformulation obligations, DAISO will provide written notice to Shefa of its intent to adopt a modified compliance standard. Upon receipt of DAISO's notice, Shefa shall have the right

1 to enforce the terms and conditions contained in the Consent Judgment by motion or any other
2 available remedy at law, with the sole issue to be adjudicated being the technical question of
3 whether the NSRL would allow for a higher DEHP, DINP or DBP content in the Covered Products
4 than that set forth in Section 2.1.

5 **12.2** This Consent Judgment may only be modified by a written instrument executed by
6 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
7 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

8 **13. DISPUTE RESOLUTION**

9 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
10 Shefa shall provide notice to DAISO. Prior to bringing any action to enforce any requirement of
11 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
12 other party with written notice of the grounds for such allegation together with all supporting
13 information as well as a complete demand for the relief sought. The Parties shall then meet and
14 confer regarding the basis for the allegation in an attempt to resolve the matter informally, including
15 providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30)
16 days to cure any alleged violation. Should such attempts at informal resolution fail, the party
17 alleging a violation may file its lawsuit seeking the proposed relief.


18 **14. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood and agree to all of the terms and conditions of this
21 Consent Judgment.
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AGREED TO:

SHEFA LMV, INC.

By: 

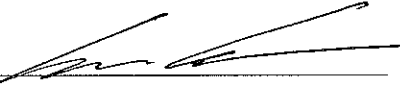
Printed Name: Israel Schochet

Its: Director

Date: 9/12/17

AGREED TO:

DAISO CALIFORNIA LLC

By: 

Printed Name: YOSHIHIDE MURATA

Its: SENIOR VICE PRESIDENT

Date: 9/12/2017

1 **[PROPOSED] JUDGMENT**

2
3 Please note that on October 31, 2017 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion
4 for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Daiso
5 California LLC came for hearing before this Court in Department 58, the Honorable John P. Boyle
6 presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the Court
8 GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
9 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
10 findings pursuant to Health & Safety Code § 25249.7(f)(4):

11 a. The injunctive relief required by the Settlement Agreement complies with Health &
12 Safety Code § 25249.7;

13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
14 Agreement is reasonable under California law; and

15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
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17 The Settlement Agreement is hereby approved, and the clerk is directed to ENTER
18 JUDGMENT in accordance with the terms of the Settlement Agreement above.
19

20 _____
21 Date

_____ Judge of the Superior Court